

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

WILLIAM SOTO, G-49875,)	
)	
Plaintiff(s),)	No. C 11-0286 CRB (PR)
)	
vs.)	ORDER OF SERVICE
)	
REBECCA QUEZADA,)	
)	
Defendant(s).)	
_____)	

Plaintiff, a prisoner at San Quentin State Prison (SQSP), has filed a pro se civil rights complaint under 42 U.S.C. § 1983 alleging inadequate mental health care. Plaintiff specifically alleges that shortly after he arrived at SQSP in February 2009, Dr. Rebecca Quezada took him off depression and psychotropic medications despite his explaining to her that he had been on these medications for many years and that he needed them to help him function. Plaintiff seeks injunctive and monetary relief.

DISCUSSION

A. Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable

claims or dismiss the complaint, or any portion of the complaint, if the complaint "is frivolous, malicious, or fails to state a claim upon which relief may be granted," or "seeks monetary relief from a defendant who is immune from such relief." Id. § 1915A(b). Pro se pleadings must be liberally construed, however. Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under color of state law. West v. Atkins, 487 U.S. 42, 48 (1988).

B. Legal Claims

Liberally construed, plaintiff's allegations state a cognizable § 1983 claim for deliberate indifference to serious medical needs against Dr. Quezada and will be ordered served. See Doty v. County of Lassen, 37 F.3d 540, 546 (9th Cir. 1994) (mentally ill prisoner may establish unconstitutional treatment on behalf of prison officials by showing that officials have been deliberately indifferent to his serious medical needs).

CONCLUSION

For the foregoing reasons and for good cause shown,

1. The clerk shall issue summons and the United States Marshal shall serve, without prepayment of fees, copies of the complaint in this matter, all attachments thereto, and copies of this order on Dr. Quezada at SQSP. The clerk also shall serve a copy of this order on plaintiff.

2. In order to expedite the resolution of this case, the court orders as follows:

a. No later than 90 days from the date of this order, defendant shall file a motion for summary judgment or other dispositive motion. A motion

1 for summary judgment shall be supported by adequate factual documentation and
2 shall conform in all respects to Federal Rule of Civil Procedure 56, and shall
3 include as exhibits all records and incident reports stemming from the events at
4 issue. If defendant is of the opinion that this case cannot be resolved by summary
5 judgment or other dispositive motion, she shall so inform the court prior to the
6 date her motion is due. All papers filed with the court shall be served promptly
7 on plaintiff.

8 b. Plaintiff's opposition to the dispositive motion shall be filed
9 with the court and served upon defendant no later than 30 days after defendant
10 serves plaintiff with the motion.

11 c. Plaintiff is advised that a motion for summary judgment
12 under Rule 56 of the Federal Rules of Civil Procedure will, if granted, end your
13 case. Rule 56 tells you what you must do in order to oppose a motion for
14 summary judgment. Generally, summary judgment must be granted when there
15 is no genuine issue of material fact – that is, if there is no real dispute about any
16 fact that would affect the result of your case, the party who asked for summary
17 judgment is entitled to judgment as a matter of law, which will end your case.
18 When a party you are suing makes a motion for summary judgment that is
19 properly supported by declarations (or other sworn testimony), you cannot simply
20 rely on what your complaint says. Instead, you must set out specific facts in
21 declarations, depositions, answers to interrogatories, or authenticated documents,
22 as provided in Rule 56(e), that contradicts the facts shown in the defendant's
23 declarations and documents and show that there is a genuine issue of material
24 fact for trial. If you do not submit your own evidence in opposition, summary
25 judgment, if appropriate, may be entered against you. If summary judgment is
26 granted, your case will be dismissed and there will be no trial. Rand v. Rowland,

1 154 F.3d 952, 962-63 (9th Cir. 1998) (en banc) (App A).

2 Plaintiff is also advised that a motion to dismiss for failure to exhaust
3 administrative remedies under 42 U.S.C. § 1997e(a) will, if granted, end your
4 case, albeit without prejudice. You must "develop a record" and present it in
5 your opposition in order to dispute any "factual record" presented by the
6 defendants in their motion to dismiss. Wyatt v. Terhune, 315 F.3d 1108, 1120
7 n.14 (9th Cir. 2003).

8 d. Defendant shall file a reply brief within 15 days of the date
9 on which plaintiff serves her with the opposition.

10 e. The motion shall be deemed submitted as of the date the
11 reply brief is due. No hearing will be held on the motion unless the court so
12 orders at a later date.

13 3. Discovery may be taken in accordance with the Federal Rules of
14 Civil Procedure. No further court order is required before the parties may
15 conduct discovery.

16 4. All communications by plaintiff with the court must be served on
17 defendant, or defendant's counsel once counsel has been designated, by mailing a
18 true copy of the document to defendant or defendant's counsel.

19 5. It is plaintiff's responsibility to prosecute this case. Plaintiff must
20 keep the court and all parties informed of any change of address and must comply
21 with the court's orders in a timely fashion. Failure to do so may result in the
22 dismissal of this action pursuant to Federal Rule of Civil Procedure 41(b).

23 SO ORDERED.

24 DATED: June 6, 2011

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26 _____
27 CHARLES R. BREYER
28 United States District Judge